

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
STEPHEN DRAGO, Individually and as Acting Chair and
President of "Neighborhoods Against Cell Towers,"

Plaintiffs,

08 Civ. 6356 (SCR) (LMS)

- against -

JOHN S. GARMENT, Chairman, and STEPHEN A.
ALEXANDER, JOHN E. DURANTE, CASIMIRO V.
CIBELLI, ARNOLD BERNSTEIN, MICHAEL F. QUINN,
and JOHN J. IORIS, as Members of the Planning Board
of the City of White Plains; THE CITY OF WHITE PLAINS,
New York, and METROPCS NEW YORK, LLC,

Defendants.
-----X

**NOTICE OF MOTION
TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT
TO F.R.C.P. RULE 12(b)(6)**

NOTICE IS HEREBY GIVEN that on October 7, 2008 at 10:00 A.M. or as soon thereafter as counsel may be heard, Defendant MetroPCS New York, LLC ("MetroPCS") will move this Court at the United States Courthouse located at 300 Quarropas Street, Courtroom 621, White Plains, New York 10601, for an order granting MetroPCS's motion to dismiss the Complaint filed by Plaintiff Stephen Drago (the "Plaintiff"), individually and as acting chair and president of "Neighborhoods Against Cell Towers," pursuant to the Federal Rules of Civil Procedure Rule 12(b)(6) for Plaintiff's failure to state a claim upon which relief can be granted by this Court because the Complaint is solely premised upon an alleged private right of action which does not exist under the Telecommunications Act of 1996 as codified at 47 U.S.C. § 332, and also granting MetroPCS such other and further relief as this Court deems just and proper, including but not limited to, MetroPCS's attorneys' fees, costs, and disbursements herein.

MetroPCS's motion herein is based upon the following papers:

- (a) September 5, 2008 Affidavit of Brian P. Galligan with attached Exhibits A and B; and
- (b) September 5, 2008 Memorandum of Law.

Dated: White Plains, New York
September 5, 2008

**CUDDY &
FEDER** ^{LLP}

Attorneys for Defendant MetroPCS
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
(914) 761-1300

By: _____


Christopher B. Fisher (CF9494)
Brian P. Galligan (BG1669)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
STEPHEN DRAGO, Individually and as Acting Chair and
President of "Neighborhoods Against Cell Towers,"

Plaintiffs,

08 Civ. 6356 (SCR) (LMS)

- against -

CERTIFICATE OF SERVICE

JOHN S. GARMENT, Chairman, and STEPHEN A.
ALEXANDER, JOHN E. DURANTE, CASIMIRO V.
CIBELLI, ARNOLD BERNSTEIN, MICHAEL F. QUINN,
and JOHN J. IORIS, as Members of the Planning Board
of the City of White Plains; THE CITY OF WHITE PLAINS,
New York, and METROPCS NEW YORK, LLC,

Defendants.
-----X

I hereby certify that on September 5, 2008, copies of the foregoing:

**DEFENDANT METROPCS'S NOTICE OF MOTION TO DISMISS PLAINTIFF'S
COMPLAINT, TOGETHER WITH ALL PAPERS IN SUPPORT THEREOF**

were filed through the Electronic Case Filing (E.C.F.) procedure under the United States District
Court of Southern New York's local rules and served upon all parties of record by email and first
class mail as follows:

Whitney N. Seymour, Jr., Esq.
425 Lexington Avenue, Rm. 1721
New York, NY 10017

Gabriel N. Seymour, Esq.
200 Route 126
Falls Village, CT 06031

Arthur Gutekunst, Esq.
Sr. Asst. Corp. Counsel
City of White Plains
255 Main Street
White Plains, NY 10601

Dated: White Plains, New York
September 5, 2008

**CUDDY &
FEDER** ^{LLP}

Attorneys for Defendant MetroPCS
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
(914) 761-1300

By: 

Christopher B. Fisher (CF9494)
Brian P. Galligan (BG1669)